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# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee

**FROM:** Principal Legislative Research Analyst - Katharine Gerrity

**DATE:** June 04, 2014

**SUBJECT:** Idaho State Department of Agriculture

IDAPA 02.04.06 - Requirements for Licensed Dairy Plants (Docket No. 02-0406-1401)

IDAPA 02.04.14 - Rules Governing Dairy Waste (Docket No. 02-0414-1401)

IDAPA 02.04.29 - Rules Governing Trichomoniasis (Docket No. 02-0429-1401)

IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law (Docket No. 02-0602-1401)

IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law (Docket No. 02-0612-1401)

IDAPA 02.06.33 - Organic Food Products Rules (Docket No. 02-0633-1401)

IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil and Plant Amendment Act of 2001 (Docket No. 02-0641-1401)

### 1. IDAPA 02.04.06 - Requirements for Licensed Dairy Plants

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.06 - Requirements for Licensed Dairy Plants. According to the department, the purpose of the rulemaking is to make the rule consistent with statutory changes that were made during the 2014 Legislative Session via Senate Bill 1338. The department notes that the legal authority will change from Chapter 4 to Chapter 5, Title 37, Idaho Code, that the title of the rule has changed and that a USDA publication incorporated by reference is being updated from the 2002 version to the 2011 version. The specific differences between versions are noted in the department's notice. The department also indicates that the changes will not affect how it will license or inspect dairy plants.

The department states that negotiated rulemaking was not conducted because the rule is merely incorporating the statutory changes to ensure the rule coincides with the changes. The rule appears to be authorized pursuant to Section 37-516, Idaho Code.

### 2. IDAPA 02.04.14 - Rules Governing Dairy Waste

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.14 - Rules Governing Dairy Waste. According to the department, the rule is being proposed to reflect and be consistent

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with the statutory changes that were made by Senate Bill 1376 during the 2014 Legislative Session. The department indicates that the specific changes add new definitions, remove obsolete definitions and revise the rule provisions regarding unauthorized discharges, compliance schedules and penalties for violations.

We contacted the department regarding the definition of "non-compliance." There was an inadvertent omission of a reference to nutrient management standards that is set forth in the statute. The department has corrected the definition with the change being reflected in the June Administrative Bulletin as published on the website of the Office of Administrative Rules.

The department states that negotiated rulemaking was not conducted because the rule is being proposed to comply with the requirements provided by statute. It appears that the rulemaking is authorized pursuant to Section 37-603, Idaho Code, which will be effective on July 1, 2014.

### **3. IDAPA 02.04.29 - Rules Governing Trichomoniasis**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.29 - Rules Governing Trichomoniasis. According to the department, the rulemaking is being proposed to remove Subsection 100.05 to conform with Senate Bill 1268 as enacted during the 2014 Legislative Session. The statutory revision requires that all non-virgin breeding bulls be tested for Trichomoniasis annually, thereby removing the testing exemption for non-virgin breeding bulls located north of the Salmon River.

The department states that negotiated rulemaking was not conducted because the rule change is necessary to comply with the 2014 statutory changes. The rulemaking appears to be authorized pursuant to Section 25-203, Idaho Code.

### **4. IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.02 - Rules Pertaining to the Idaho Commercial Feed Law. According to the department, the purpose of the rulemaking is to incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Feed Control Officials (AAFCO) as they pertain to the methodology and practice of conducting regulatory commercial feed registration and label review.

The department states that negotiated rulemaking was not conducted due to the simple nature of the proposed amendment. The rule appears to be authorized pursuant to Section 25-2710, Idaho Code.

### **5. IDAPA 02.06.12 - Rules Pertaining To the Idaho Fertilizer Law**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.12 - Rules Pertaining To the Idaho Fertilizer Law. According to the department, the purpose of the rulemaking is to incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory fertilizer registration and label review.

The department states that negotiated rulemaking was not conducted due to the simple nature of the proposed amendment. The rule appears to be authorized pursuant to Section 22-604, Idaho Code.

#### **6. IDAPA 02.06.33 - Organic Food Products Rules**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.33 - Organic Food Products Rules. According to the department, the current rule requires annual registration and payment of fees of \$50.00 each for organic producers and handlers with \$5,000 or less in annual gross sales and other certifying agents operating in Idaho. The department notes that the registration and fee is prohibited by the National Organic Program (NOP) administered by the U.S. Department of Agriculture under 7 CFR Part 205. In accordance with that prohibition, the department is proposing to repeal IDAPA 02.06.33.300.

The department indicates that there will be no impact to the General Fund but that there will be a \$1,250 reduction in annual revenue to the Organic Food Program dedicated fund. The department states that negotiated rulemaking was not conducted because the federal NOP rules take precedence over IDAPA 02.06.33.300, thus requiring the repeal. The rulemaking appears to be authorized pursuant to Section 22-1103, Idaho Code.

#### **7. IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil and Plant Amendment Act of 2001**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.41 - Rules Pertaining To the Idaho Soil and Plant Amendment Act of 2001. According to the department, the purpose of the rulemaking is to incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.

The department states that negotiated rulemaking was not conducted due to the simple nature of the proposed amendment. The rule appears to be authorized pursuant to Section 22-2204, Idaho Code.

cc: Department of Agriculture  
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